

110TH CONGRESS  
2D SESSION

# H. R. 6828

To make improvements in the electronic filing of export data, to strengthen enforcement authorities under the Export Administration Act of 1979, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2008

Mr. SHERMAN (for himself, Mr. MANZULLO, and Mr. SMITH of Washington) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To make improvements in the electronic filing of export data, to strengthen enforcement authorities under the Export Administration Act of 1979, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Export Control Improvements Act”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—IMPROVEMENTS IN ELECTRONIC FILING OF EXPORT DATA

Sec. 101. Short title.

Sec. 102. Mandatory electronic filing of export data.

Sec. 103. Information sharing of Automated Export System data; conferences; automated export system licenses and filings.

Sec. 104. Definitions.

Sec. 105. Conforming amendments.

Sec. 106. Authorization of appropriations.

#### TITLE II—EXPORT ENFORCEMENT ENHANCEMENT

Sec. 201. Short title.

Sec. 202. Declaration of policy.

Sec. 203. Enforcement.

Sec. 204. Authorization of appropriations.

Sec. 205. Termination date.

Sec. 206. Designation of destinations of diversion concern.

Sec. 207. Validated end-user program review.

Sec. 208. Annual report on transfers of militarily sensitive technology to countries and entities of concern.

Sec. 209. Definition.

## **TITLE I—IMPROVEMENTS IN ELECTRONIC FILING OF EXPORT DATA**

### **SEC. 101. SHORT TITLE.**

This title may be cited as the “Securing Exports Through Coordination and Technology Act”.

### **SEC. 102. MANDATORY ELECTRONIC FILING OF EXPORT DATA.**

Section 1404(b) of the Foreign Relations Authorization Act, Fiscal Year 2003 (13 U.S.C. 301 note) is amended to read as follows:.

“(b) IN GENERAL.—

1           “(1) FILING THROUGH AES.—The Secretary of  
2       Commerce shall maintain regulations that require  
3       that persons who are required to file Shipper’s Ex-  
4       port Declarations under chapter 9 of title 13, United  
5       States Code, file (either themselves or through their  
6       intermediaries) such Declarations through the Auto-  
7       mated Export System before the items are exported  
8       from any United States port, unless the Secretary of  
9       Commerce, with the concurrence of the Secretary of  
10      State, the Secretary of Defense, the Secretary of the  
11      Treasury, and the Secretary of Homeland Security,  
12      determines that it is appropriate to grant an excep-  
13      tion to this requirement. Such filing of data shall, at  
14      a minimum, include—

15               “(A) the name and address of the principal  
16      party-in-interest in the United States;

17               “(B) the name and address of the foreign  
18      principal party-in-interest;

19               “(C) the name and address of all inter-  
20      mediate consignees;

21               “(D) the name and address of the ultimate  
22      consignee;

23               “(E) the commodity classification of each  
24      item being exported;

1           “(F) when appropriate, the license number  
2           or regulatory authorization for the export; and

3           “(G) a declaration, under penalty of per-  
4           jury under the laws of the United States, that  
5           the information filed under this paragraph is  
6           true and correct.

7           “(2) MODIFICATIONS TO REGULATIONS.—Any  
8           modifications to the regulations referred to in para-  
9           graph (1) may be made only with the concurrence of  
10          the heads of the relevant departments and agencies.

11          “(3) INTERMEDIARY DEFINED.—In this sub-  
12          section, the term ‘intermediary’ means a freight for-  
13          warder, a non-vessel operating common carrier  
14          (NVOCC), an ATA (Admission Temporaire/Tem-  
15          porary Admission) Carnet national guaranteeing as-  
16          sociation and its service providers, or any other simi-  
17          lar entity as determined by the Secretary of Com-  
18          merce, in consultation with the Secretary of Home-  
19          land Security.”.

20   **SEC. 103. INFORMATION SHARING OF AUTOMATED EXPORT**  
21                   **SYSTEM DATA; CONFERENCES; AUTOMATED**  
22                   **EXPORT SYSTEM LICENSES AND FILINGS.**

23          Chapter 9 of title 13, United States Code, is amend-  
24   ed—

1           (1) by redesignating sections 302 through 307  
2           as sections 306 through 311, respectively; and

3           (2) by inserting after section 301 the following  
4           new sections:

5   **“§ 302. Conferences and seminars**

6           “(a) MANDATORY CONFERENCE PARTICIPATION.—  
7   The Secretary shall work with the Secretary of State, the  
8   Secretary of Defense, the Secretary of Homeland Security,  
9   and the Secretary of the Treasury to ensure that appro-  
10   priate personnel of each of their respective departments  
11   and agencies that are involved in the regulation of exports  
12   or the enforcement of such regulation are made available,  
13   subject to the availability of such personnel, to participate  
14   in fora the purpose of which is to educate exporters about  
15   laws and regulations of the United States governing ex-  
16   ports and about the Automated Export System in par-  
17   ticular, including through seminars, educational or train-  
18   ing meetings, exhibitions, symposiums, and other similar  
19   meetings.

20          “(b) AUTHORITY TO COLLECT FEES.—The Sec-  
21   retary may collect fees from any individual or other person  
22   attending or participating in any forum described in sub-  
23   section (a) that is conducted by, or jointly with, the De-  
24   partment of Commerce. The Secretary may use contrac-

1 tors to collect such fees. Fees under this subsection may  
 2 be collected in advance of the forum.

3 “(c) DISPOSITION OF COLLECTED FEES.—Amounts  
 4 collected under subsection (b) shall be used to pay all or  
 5 part of the cost of fora described in subsection (a), and  
 6 shall be credited to the account from which the costs of  
 7 such fora have been paid or will be paid.

8 “(d) BUDGET FOR PARTICIPATING AGENCIES.—In  
 9 the case of any agency that does not have the available  
 10 funds to participate in a forum under subsection (a), the  
 11 Secretary shall make such sums available, from fees col-  
 12 lected under subsection (b), as are necessary to allow such  
 13 participation by the agency.

14 “(e) AVAILABILITY OF MATERIALS TO THE PUB-  
 15 LIC.—The Secretary shall make available to the public, in-  
 16 cluding through its public website, relevant materials pro-  
 17 vided for the fora held under subsection (a).

18 **“§ 303. Automated Export System registrations for fil-**  
 19 **ers**

20 “(a) REGISTRATIONS.—

21 “(1) IN GENERAL.—The Secretary may estab-  
 22 lish a registration program for persons to file infor-  
 23 mation in the Automated Export System, either on  
 24 behalf of themselves or acting as an intermediary.  
 25 Such registration program may include authorization

1 for individuals to file as well as any corporation, as-  
2 sociation, or partnership that is organized under the  
3 laws of the United States or of any State, the Dis-  
4 trict of Columbia, or any commonwealth, territory,  
5 or possession of the United States.

6 “(2) QUALIFICATIONS FOR INDIVIDUALS.—The  
7 Secretary may establish qualification requirements  
8 for an individual seeking to register under the pro-  
9 gram, except that an individual may be so registered  
10 only if the individual is a United States citizen, an  
11 alien lawfully admitted for permanent residence to  
12 the United States, or a national of the United States  
13 (in the case of a resident of a territory or possession  
14 of the United States). In assessing the qualification  
15 of an applicant for registration, the Secretary may  
16 conduct an examination to determine the applicant’s  
17 knowledge of the Automated Export System and  
18 laws, regulations, and procedures related to the ex-  
19 port of goods from the United States, and may re-  
20 quire participation in a continuing education pro-  
21 gram on a periodic basis. The Secretary may also  
22 obtain information to determine an applicant’s fit-  
23 ness and character to act as an Automated Export  
24 System filer. An individual who meets the require-

1       ments for registration under this paragraph shall be  
2       issued an Automated Export System registration.

3               “(3) QUALIFICATIONS FOR CORPORATIONS AND  
4       OTHER BUSINESS ENTITIES.—A corporation, asso-  
5       ciation, or partnership may be registered under this  
6       subsection only if at least one official of the corpora-  
7       tion or association who is designated by the corpora-  
8       tion or association, or one member of the partner-  
9       ship, who is authorized to act on behalf of the cor-  
10      poration, association, or partnership, as the case  
11      may be—

12               “(A) holds a valid Automated Export Sys-  
13      tem registration under paragraph (2);

14               “(B) is responsible for the supervision and  
15      control of filing Shipper’s Export Declaration  
16      information in the Automated Export System;  
17      and

18               “(C) is a United States citizen, an alien  
19      lawfully admitted for permanent residence to  
20      the United States, or a national of the United  
21      States (in the case of a resident of a territory  
22      or possession of the United States).

23      The Secretary may establish such other registration  
24      requirements for corporations, associations, and  
25      partnerships as the Secretary considers appropriate.



1 A corporation, association, or partnership that meets  
2 the requirements for registration under this para-  
3 graph shall be issued an Automated Export System  
4 registration.

5 “(4) FEDERAL MARITIME COMMISSION LI-  
6 CENSES.—An ocean transportation intermediary  
7 (OTI) license issued by the Federal Maritime Com-  
8 mission may be used to satisfy the initial qualifica-  
9 tion requirements of the registration program under  
10 this subsection, if the Federal Maritime Commission  
11 maintains sufficient requirements with respect to  
12 such license, as determined by the Secretary.

13 “(5) LAPSE OF REGISTRATION.—Registrations  
14 under this subsection shall be granted for a period  
15 of not less than 3 years, and may be renewed in  
16 such manner and under such conditions as are es-  
17 tablished by the Secretary.

18 “(b) DENIAL, SUSPENSION, OR REVOCATION OF  
19 REGISTRATION.—

20 “(1) GENERAL RULE.—The Secretary may re-  
21 voke or suspend a registration or deny an applica-  
22 tion for registration under subsection (a), which may  
23 take effect immediately, if the Secretary has reason  
24 to believe that the registrant or applicant has vio-  
25 lated or will violate any regulations issued under this

1 section or any law or regulation of the United States  
2 controlling exports. The Secretary may provide rules  
3 for notifying registrants and registration applicants  
4 of the process for revoking or suspending a registra-  
5 tion or denying an application, consistent with the  
6 need to protect national security.

7 “(2) PROCEDURES FOR DENIAL, REVOCATION,  
8 OR SUSPENSION.—

9 “(A) IN GENERAL.—If a registration is re-  
10 voked or suspended or an application is denied  
11 under paragraph (1), the Secretary shall send  
12 the registrant or applicant notice in writing spe-  
13 cifically setting forth the grounds for suspen-  
14 sion, revocation, or denial, shall allow the reg-  
15 istrant or applicant a period of 30 calendar  
16 days beginning on the date on which the notice  
17 is received to respond in writing, and shall ad-  
18 vise the registrant or applicant of the right to  
19 a hearing. A registrant or applicant may re-  
20 quest an extension of time for such response,  
21 and the Secretary shall grant such extension for  
22 good cause shown. If no response is filed within  
23 that 30-day period, or any extension thereof,  
24 and the Secretary determines that the revoca-  
25 tion, suspension, or denial is still warranted,

1 the revocation, suspension, or denial shall be-  
2 come final.

3 “(B) HEARING.—If a timely response is  
4 received under subparagraph (A) and the reg-  
5 istrant or applicant requests a hearing, a hear-  
6 ing shall be held within 30 calendar days after  
7 the date on which the request is received, or at  
8 a later date if the registrant or applicant re-  
9 quests an extension and shows good cause  
10 therefor. An administrative law judge appointed  
11 under section 3105 of title 5 shall preside at  
12 the hearing, which shall be conducted in accord-  
13 ance with regulations issued by the Secretary.  
14 The administrative law judge shall issue a writ-  
15 ten decision either upholding, reversing, or  
16 modifying the decision of the Secretary, based  
17 solely on the record, setting forth the findings  
18 of fact, and the reasons for the decision.

19 “(C) SUSPENSION OF REGISTRATION  
20 PENDING APPEAL.—In a case in which a person  
21 appeals a decision revoking or suspending a  
22 registration under this subsection, including an  
23 appeal under subsection (c), the Secretary may  
24 order that the registration continue to be sus-  
25 pended while the appeal is pending.

1           “(3) SETTLEMENT AND COMPROMISE.—The  
2       Secretary may settle and compromise any proceeding  
3       that has been instituted under this subsection ac-  
4       cording to the terms and conditions agreed to by the  
5       parties, including the reduction of any proposed sus-  
6       pension or revocation.

7           “(4) LIMITATION OF ACTIONS.—The Secretary  
8       may revoke or suspend a registration or deny an ap-  
9       plication for registration under this subsection only  
10      if the appropriate service of written notice is made  
11      under paragraph (2)(A) within 5 years after the  
12      date on which the alleged act described in paragraph  
13      (1) was committed, except that if the alleged act  
14      consists of fraud, the 5-year period shall begin on  
15      the date on which the alleged act was discovered.

16      “(c) JUDICIAL APPEAL.—

17           “(1) IN GENERAL.—A registrant under this sec-  
18      tion, or an applicant for a registration under this  
19      section, may appeal any decision of the administra-  
20      tive law judge under subsection (b) suspending or  
21      revoking the registration or denying the application  
22      by filing in the appropriate United States district  
23      court, within 60 days after the date on which the de-  
24      cision is issued, a written petition requesting that  
25      the decision be modified or set aside in whole or in

1 part. A copy of the petition shall be served upon the  
2 Secretary. In cases involving revocation or suspen-  
3 sion of a registration, the Secretary, after receiving  
4 the petition, shall file in the court the record upon  
5 which the decision complained of was entered.

6 “(2) FAILURE TO APPEAL.—If an appeal is not  
7 filed within the time limits specified in paragraph  
8 (1), the decision of the administrative law judge  
9 under subsection (b) shall be final and conclusive.

10 “(d) REGULATIONS.—The Secretary shall provide a  
11 period of at least 90 days for the submission of public  
12 comments on any regulations issued to carry out this sec-  
13 tion, before such regulations may become effective.

14 **“§ 304. Blocking prohibited or restricted exports**

15 “(a) IN GENERAL.—The Secretary, with the concur-  
16 rence of the heads of the appropriate departments and  
17 agencies, shall issue regulations to ensure that the Auto-  
18 mated Export System will identify the filing of data in  
19 connection with an export from the United States if the  
20 country of destination of intended export or the export  
21 control information, or lack thereof, would result in a vio-  
22 lation of any prohibition or restriction on exports under  
23 the laws and regulations of the United States.

24 “(b) SUFFICIENCY AND TIMELINESS OF EXPORT  
25 CONTROL INFORMATION IN THE AUTOMATED EXPORT

1 SYSTEM.—Not later than 1 year after the date of the en-  
2 actment of the Securing Exports Through Coordination  
3 and Technology Act, the Secretary, with the concurrence  
4 of the heads of the relevant departments and agencies and  
5 in consultation with representatives of affected industries  
6 and nongovernmental organizations with relevant exper-  
7 tise, shall—

8           “(1) ensure on an ongoing basis that changes  
9       in laws and regulations controlling exports from the  
10      United States are reflected in the Automated Export  
11      System upon implementation of those changes;

12           “(2) enable on an ongoing basis the classifica-  
13      tion of products to be exported in a manner suffi-  
14      cient to carry out the purposes of this section; and

15           “(3) ensure on an ongoing basis that all lists  
16      maintained by the United States and comprised of  
17      persons or entities to whom exports are restricted  
18      are available in a standardized format and contain  
19      sufficient descriptive information to enable their ef-  
20      fective use by exporters (through the Automated Ex-  
21      port System or otherwise) to screen transactions and  
22      prevent diversions of exported items for unauthor-  
23      ized destinations, parties, or uses.

24           “(c) MINIMUM REQUIREMENTS.—The Secretary,  
25 with the concurrence of the heads of the relevant depart-

1 ments and agencies and in consultation with representa-  
2 tives of affected industries and nongovernmental organiza-  
3 tions with relevant expertise, shall ensure that the Auto-  
4 mated Export System contains at least the following oper-  
5 ational features:

6           “(1) The Automated Export System will proc-  
7       ess data filed in connection with an export and will  
8       alert the filer to export license requirements under  
9       the laws and regulations of the United States.

10           “(2) If the data filed that is associated with the  
11       export does not satisfy requirements under the ex-  
12       port control laws and regulations of the United  
13       States, the Automated Export System will issue no-  
14       tices that the transaction cannot be completed, com-  
15       pliance alerts, and other warnings, as appropriate,  
16       accompanied by references to the applicable authori-  
17       ties.

18           “(3) The Automated Export System will retain  
19       records of actions of users while filing export data.

20           “(d) CONSTRUCTION.—Nothing in this section shall  
21       be construed to authorize an export solely because the  
22       Automated Export System accepts the filing of data.

23 **“§ 305. Fees and charges**

24           “The Secretary may issue regulations prescribing  
25       reasonable fees and charges, with particular sensitivity to

1 small businesses, to defray the costs of the Secretary in  
2 carrying out this chapter.”.

3 **SEC. 104. DEFINITIONS.**

4 Chapter 9 of title 13, United States Code, is amended  
5 by adding at the end the following new section:

6 **“§ 312. Definitions**

7 “In this chapter:

8 “(1) AUTOMATED EXPORT SYSTEM.—The term  
9 ‘Automated Export System’ means the automated  
10 and electronic system for filing export information  
11 established under this chapter.

12 “(2) INTERMEDIARY.—The term ‘intermediary’  
13 means a freight forwarder, a non-vessel operating  
14 common carrier (NVOCC), an ATA (Admission  
15 Temporaire/Temporary Admission) Carnet national  
16 guaranteeing association and its service providers, or  
17 any other similar entity as determined by the Sec-  
18 retary, in consultation with the Secretary of Home-  
19 land Security.

20 “(3) RELEVANT DEPARTMENTS AND AGEN-  
21 CIES.—The term ‘relevant departments and agen-  
22 cies’ means the Department of State, the Depart-  
23 ment of Defense, the Department of Homeland Se-  
24 curity, and the Department of the Treasury.



1           “(4) SHIPPER’S EXPORT DECLARATION.—The  
2           term ‘Shipper’s Export Declaration’ means the ex-  
3           port information filed under this chapter.”.

4   **SEC. 105. CONFORMING AMENDMENTS.**

5           (a) COLLECTION AND PUBLICATION.—Section 301 of  
6           title 13, United States Code, is amended by striking sub-  
7           section (g) and redesignating subsection (h) as subsection  
8           (g).

9           (b) REGULATIONS, ORDERS, ETC.—Section 306 of  
10          title 13, United States Code, as redesignated by section  
11          103(1) of this Act, is amended by striking the last sen-  
12          tence and inserting “The Secretary shall make rules, regu-  
13          lations, and orders, and amendments thereto, in consulta-  
14          tion with the Secretary of Homeland Security.”.

15          (c) CROSS REFERENCES.—Section 309 of title 13,  
16          United States Code, as redesignated by section 103(1) of  
17          this Act, is amended—

18                 (1) in subsection (b), by striking “304” and in-  
19                 serting “308”; and

20                 (2) in subsection (c)—

21                         (A) in paragraph (1), by striking “304”  
22                         and inserting “308”;

23                         (B) in paragraph (4), by striking “306”  
24                         and inserting “310”; and

1 (C) in paragraph (5), by striking “304”  
 2 and inserting “308”.

3 (d) TABLE OF CONTENTS.—The table of contents for  
 4 chapter 9 of title 13, United States Code, is amended to  
 5 read as follows:

“301. Collection and publication.  
 “302. Conferences and seminars.  
 “303. Automated Export System registrations for filers.  
 “304. Blocking prohibited or restricted exports.  
 “305. Fees and charges.  
 “306. Rules, regulations, and orders.  
 “307. Secretary of Treasury functions.  
 “308. Filing export information, delayed filings, penalties for failure to file.  
 “309. Penalties for unlawful export information activities.  
 “310. Delegation of functions.  
 “311. Relationship to general census law.  
 “312. Definitions.”.

6 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums  
 8 as may be necessary to carry out the amendments made  
 9 by this Act.

10 **TITLE II—EXPORT**  
 11 **ENFORCEMENT ENHANCEMENT**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Export Enforcement  
 14 Act of 2008”.

15 **SEC. 202. DECLARATION OF POLICY.**

16 The Congress declares that, at a time of evolving  
 17 threats and changing relationships with other countries,  
 18 as well as rapid technological change and an increasingly  
 19 globalized economy, United States strategic export con-  
 20 trols are in urgent need of a comprehensive review in order

1 to assure those controls are achieving their intended pur-  
2 poses of protecting the national security of the United  
3 States in the Global War on Terrorism and of promoting  
4 the economic and foreign policy interests of the United  
5 States, in particular by assuring that—

6 (1) export authorization procedures are prop-  
7 erly designed to prioritize which exports may be ap-  
8 proved quickly for trusted partners of the United  
9 States and which require greater scrutiny in order to  
10 safeguard national interests;

11 (2) strategic export controls appropriately and  
12 effectively identify and protect technologies critical  
13 to United States national security interests; and

14 (3) coordination among the responsible depart-  
15 ments and agencies of the Government of the United  
16 States is improved in order to enhance efficiency, in-  
17 formation sharing, and the consistent execution of  
18 United States policy.

19 **SEC. 203. ENFORCEMENT.**

20 Section 12 of the Export Administration Act of 1979  
21 (50 U.S.C. App. 2411) is amended as follows:

22 (1) Subsection (a) is amended by striking para-  
23 graphs (1), (2), (3), and (4) and inserting after “(a)  
24 GENERAL AUTHORITY.—” the following:

1           “(1) IN GENERAL.—To the extent necessary or  
2           appropriate to the enforcement of this Act or to the  
3           imposition of any penalty, forfeiture, or liability arising under this Act—

5                   “(A) the head of any department or agency  
6                   exercising any function under this Act (and officers or employees of such department or agency specifically designated by the head thereof)  
7                   may conduct investigations within the United  
8                   States;  
9                   States;

11                   “(B) the Secretary of Homeland Security  
12                   (and officers or employees of U.S. Immigration and Customs Enforcement specifically designated by the Secretary of the Department of  
13                   Homeland Security) and the Secretary of Commerce (and officers and employees of the Office  
14                   of Export Enforcement of the Department of  
15                   Commerce specifically designated by the Secretary of Commerce) may conduct investigations outside of the United States;  
16                   Commerce;  
17                   Commerce;  
18                   Commerce;  
19                   Commerce;  
20                   Commerce;

21                   “(C) the head of any department or agency  
22                   exercising any function under this Act (and such officers or employees) may obtain information from, require reports or the keeping of  
23                   records by, inspect the books, records, and  
24                   records by, inspect the books, records, and  
25                   records by, inspect the books, records, and

1 other writings, premises, or property of, and  
2 take the sworn testimony of, any person;

3 “(D)(i) such officers or employees may ad-  
4 minister oaths or affirmations, and may by sub-  
5 poena require any person to appear and testify  
6 or to appear and produce books, records, and  
7 other writings, or both; and

8 “(ii) in the case of contumacy by, or re-  
9 fusual to obey a subpoena issued to, any such  
10 person, a district court of the United States,  
11 after notice to any such person and hearing,  
12 shall have jurisdiction to issue an order requir-  
13 ing such person to appear and give testimony or  
14 to appear and produce books, records, and  
15 other writings, or both, and any failure to obey  
16 such order of the court may be punished by  
17 such court as a contempt thereof; and

18 “(E) the Secretary (and officers or employ-  
19 ees of the Department of Commerce designated  
20 by the Secretary) may conduct, outside the  
21 United States, pre-license checks and post-ship-  
22 ment verifications of items licensed for export.

23 “(2) AUTHORITY OF IMMIGRATION AND CUS-  
24 TOMS ENFORCEMENT AND CUSTOMS AND BORDER  
25 PROTECTION.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), U.S. Immigration and Customs En-  
3 forcement and U.S. Customs and Border Pro-  
4 tection are authorized, in the enforcement of  
5 this Act—

6           “(i) to search, detain (after search),  
7 and seize goods or technology at those  
8 places outside the United States where  
9 such entities are authorized, pursuant to  
10 agreements or other arrangements with  
11 other countries, to perform enforcement  
12 activities; and

13           “(ii) to conduct such activities at  
14 those ports of entry or exit from the  
15 United States where officers of U.S. Immi-  
16 gration and Customs Enforcement and  
17 U.S. Customs and Border Protection are  
18 authorized by law to conduct such activi-  
19 ties.

20           “(B) SEARCHES AND SEIZURES.—An offi-  
21 cer of U.S. Immigration and Customs Enforce-  
22 ment or U.S. Customs and Border Protection  
23 may do the following in carrying out enforce-  
24 ment authority under this Act:

1           “(i) Stop, search, and examine a vehi-  
2           cle, vessel, aircraft, person, package, or  
3           container on which or whom such officer  
4           has reasonable cause to suspect there are  
5           any goods or technology that has been, is  
6           being, or is about to be exported from the  
7           United States in violation of this Act.

8           “(ii) Detain (after search) or seize  
9           and secure for trial any goods or tech-  
10          nology on or about such vehicle, vessel, air-  
11          craft, or person, or in such package or con-  
12          tainer, if such officer has probable cause to  
13          believe the goods or technology has been, is  
14          being, or is about to be exported from the  
15          United States in violation of this Act.

16          “(iii) Make arrests without warrant  
17          for any violation of this Act committed in  
18          the presence or view of the officer or if the  
19          officer has probable cause to believe that  
20          the person to be arrested has committed or  
21          is committing such a violation.

22          “(C) ARREST AUTHORITY.—The arrest au-  
23          thority conferred by subparagraph (B)(iii) is in  
24          addition to any arrest authority under other  
25          laws.

“(D) DETENTION OF GOODS.—U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection may not detain for more than 45 days any shipment of goods or technology that is eligible for export without prior authorization under this Act. In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 45-day period. At the end of that 45-day period, U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection (as the case may be) shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.

“(3) ENFORCEMENT.—

“(A) IN GENERAL.—Subject to subparagraph (B)—

“(i) the Secretary shall have the responsibility for the enforcement of section 8;



1 “(ii) in the enforcement of the other  
2 provisions of this Act, the Secretary is au-  
3 thorized to search, detain (after search),  
4 and seize goods or technology—

5 “(I) at those places within the  
6 United States other than those ports  
7 specified in paragraph (2)(A); and

8 “(II) at those places outside the  
9 United States where the Office of Ex-  
10 port Enforcement of the Department  
11 of Commerce, pursuant to agreements  
12 or other arrangements with other  
13 countries, is authorized to perform en-  
14 forcement activities;

15 “(iii) the search, detention (after  
16 search), or seizure of goods or technology  
17 at those ports and places specified in para-  
18 graph (2)(A) may be conducted by officers  
19 or employees of the Department of Com-  
20 merce designated by the Secretary, with  
21 the concurrence of the Secretary of Home-  
22 land Security; and

23 “(iv) enforcement activities conducted  
24 outside the United States, except for pre-  
25 license checks and post-shipment

1 verifications, shall be undertaken with the  
2 concurrence of the Secretary of Homeland  
3 Security.

4 “(B) AUTHORITY OF OFFICE OF EXPORT  
5 ENFORCEMENT.—The Secretary may designate  
6 any employee of the Office of Export Enforce-  
7 ment of the Department of Commerce to do the  
8 following in carrying out the enforcement au-  
9 thority conferred by this Act:

10 “(i) Execute any warrant or other  
11 process issued by a court or officer of com-  
12 petent jurisdiction.

13 “(ii) Make arrests without warrant for  
14 any offense against the United States com-  
15 mitted in such officer’s presence or view or  
16 any felony offense against the United  
17 States, if such officer has probable cause  
18 to believe that the person to be arrested  
19 has committed or is committing that felony  
20 offense.

21 “(iii) Carry firearms.

22 “(4) ATTORNEY GENERAL GUIDELINES.—The  
23 authorities conferred by the Export Enforcement  
24 Act of 2008 under paragraph (3) shall be exercised

1 consistent with guidelines approved by the Attorney  
2 General.”.

3 (2) Subsection (a) is further amended—

4 (A) by striking paragraphs (6), (7), and  
5 (8);

6 (B) in paragraph (5)—

7 (i) by striking “(5) All” and inserting  
8 “(5) REFERRAL OF VIOLATIONS.—All”;  
9 and

10 (ii) by moving the remaining text 2  
11 ems to the right; and

12 (C) by inserting after paragraph (5) the  
13 following:

14 “(6) BEST PRACTICES GUIDELINES.—

15 “(A) IN GENERAL.—The Secretary, in con-  
16 sultation with the technical advisory committees  
17 established under section 5(h) and exporters,  
18 shippers, trade facilitators, freight forwarders,  
19 and reexporters representative of their respec-  
20 tive industries, shall continue to publish and  
21 update ‘best practices’ guidelines to help those  
22 industries develop and implement, on a vol-  
23 untary basis, effective export control programs  
24 in compliance with this Act.

1                   “(B) EXPORT COMPLIANCE PROGRAM.—

2                   The existence of an effective export compliance  
3                   program and high quality overall export compli-  
4                   ance efforts are factors that ordinarily should  
5                   be given weight as mitigating factors in civil  
6                   penalty enforcement actions under this Act.

7                   “(7) REFERENCE TO ENFORCEMENT.—For  
8                   purposes of this section, a reference to the enforce-  
9                   ment of this Act or to a violation of this Act in-  
10                  cludes a reference to the enforcement or a violation  
11                  of any regulation, order, or license issued under this  
12                  Act, and the enforcement or violation of the Export  
13                  Administration Regulations as maintained and  
14                  amended under the authority of the International  
15                  Emergency Economic Powers Act (50 U.S.C. 1701  
16                  et seq.), or any order or license issued pursuant to  
17                  those regulations.”.

18                  (3) Subsection (c)(3) is amended by striking  
19                  “Commissioner of Customs” each place it appears  
20                  and inserting “Secretary of Homeland Security”.

21                  (4) Section 12 is further amended by adding at  
22                  the end the following new subsections:

23                  “(f) FORFEITURE.—

24                  “(1) IN GENERAL.—Any tangible items lawfully  
25                  seized under subsection (a) by designated officers or

1 employees shall be subject to forfeiture to the United  
2 States.

3 “(2) PROCEDURES.—Any seizure or forfeiture  
4 under this subsection shall be carried out in accord-  
5 ance with the procedures set forth in chapter 46 of  
6 title 18, United States Code.

7 “(g) UNDERCOVER INVESTIGATION OPERATIONS.—

8 “(1) USE OF FUNDS.—With respect to any un-  
9 dercover investigative operation conducted by the Of-  
10 fice of Export Enforcement of the Department of  
11 Commerce that is necessary for the detection and  
12 prosecution of violations of this Act—

13 “(A) funds made available for export en-  
14 forcement under this Act may be used to pur-  
15 chase property, buildings, and other facilities,  
16 and to lease equipment, conveyances, and space  
17 within the United States, without regard to sec-  
18 tions 1341 and 3324 of title 31, United States  
19 Code, section 8141 of title 40, United States  
20 Code, sections 3732(a) and 3741 of the Revised  
21 Statutes of the United States (41 U.S.C. 11(a)  
22 and 22), and sections 304(a), 304A, 304B,  
23 304C, and 305 of the Federal Property and Ad-  
24 ministrative Services Act of 1949 (41 U.S.C.  
25 254(a), 254b, 254c, 254d, and 255);

1           “(B) funds made available for export en-  
2           forcement under this Act may be used to estab-  
3           lish or to acquire proprietary corporations or  
4           business entities as part of an undercover oper-  
5           ation, and to operate such corporations or busi-  
6           ness entities on a commercial basis, without re-  
7           gard to sections 1341, 3324, and 9102 of title  
8           31, United States Code;

9           “(C) funds made available for export en-  
10          forcement under this Act and the proceeds from  
11          undercover operations may be deposited in  
12          banks or other financial institutions without re-  
13          gard to section 648 of title 18, United States  
14          Code, and section 3302 of title 31, United  
15          States Code; and

16          “(D) the proceeds from undercover oper-  
17          ations may be used to offset necessary and rea-  
18          sonable expenses incurred in such operations  
19          without regard to section 3302 of title 31,  
20          United States Code, if the Secretary certifies,  
21          in writing, that the action authorized by sub-  
22          paragraph (A), (B), or (C) for which the funds  
23          would be used is necessary for the conduct of  
24          the undercover operation.

1           “(2) DISPOSITION OF BUSINESS ENTITIES.—If  
2       a corporation or business entity established or ac-  
3       quired as part of an undercover operation has a net  
4       value of more than \$250,000 and is to be liquidated,  
5       sold, or otherwise disposed of, the Secretary shall re-  
6       port the circumstances to the Comptroller General of  
7       the United States as much in advance of such dis-  
8       position as the Secretary determines is practicable.  
9       The proceeds of the liquidation, sale, or other dis-  
10      position, after obligations incurred by the corpora-  
11      tion or business enterprise are met, shall be depos-  
12      ited in the Treasury of the United States as mis-  
13      cellaneous receipts. Any property or equipment pur-  
14      chased pursuant to paragraph (1) may be retained  
15      for subsequent use in undercover operations under  
16      this section. When such property or equipment is no  
17      longer needed, it shall be considered surplus and dis-  
18      posed of as surplus government property.

19           “(3) DEPOSIT OF PROCEEDS.—As soon as the  
20      proceeds from an undercover investigative operation  
21      of the Office of Export Enforcement of the Depart-  
22      ment of Commerce with respect to which an action  
23      is authorized and carried out under this subsection  
24      are no longer needed for the conduct of such oper-  
25      ation, the proceeds or the balance of the proceeds re-

1       maining at the time shall be deposited into the  
2       Treasury of the United States as miscellaneous re-  
3       ceipts.

4               “(4) AUDIT AND REPORT.—

5               “(A) AUDIT.—The Secretary shall conduct  
6       a detailed financial audit of each closed under-  
7       cover investigative operation of the Office of  
8       Export Enforcement of the Department of  
9       Commerce. Not later than 180 days after an  
10      undercover operation is closed, the Secretary  
11      shall submit to the Congress a report on the re-  
12      sults of the audit.

13              “(B) REPORT.—The Secretary shall sub-  
14      mit annually to the Congress a report, which  
15      may be included in the annual report under sec-  
16      tion 14, including the following information:

17              “(i) The number of undercover inves-  
18      tigative operations pending as of the end of  
19      the period for which the report is sub-  
20      mitted.

21              “(ii) The number of undercover inves-  
22      tigative operations commenced in the 1-  
23      year period preceding the period for which  
24      the report is submitted.



1 “(iii) The number of undercover in-  
2 vestigative operations closed in the 1-year  
3 period preceding the period for which such  
4 report is submitted and, with respect to  
5 each such closed undercover operation, the  
6 results obtained and any civil claims made  
7 with respect to the operation.

8 “(C) DEFINITIONS.—In this paragraph:

9 “(i) CLOSED.—The term ‘closed’, with  
10 respect to an undercover investigative oper-  
11 ation, refers to the earliest point in time at  
12 which all criminal proceedings (other than  
13 appeals) pursuant to the investigative oper-  
14 ation are concluded, or covert activities  
15 pursuant to such operation are concluded,  
16 whichever occurs later.

17 “(ii) UNDERCOVER INVESTIGATIVE  
18 OPERATION AND UNDERCOVER OPER-  
19 ATION.—

20 “(I) IN GENERAL.—The terms  
21 ‘undercover investigative operation’  
22 and ‘undercover operation’ mean any  
23 undercover investigative operation  
24 conducted by the Office of Export En-

1 enforcement of the Department of Com-  
2 merce—

3 “(aa) in which the gross re-  
4 ceipts (excluding interest earned)  
5 exceed \$25,000, or expenditures  
6 (other than expenditures for sala-  
7 ries of employees) exceed  
8 \$75,000; and

9 “(bb) which is exempt from  
10 section 3302 or 9102 of title 31,  
11 United States Code.

12 “(II) EXCEPTION.—Items (aa)  
13 and (bb) of subclause (I) shall not  
14 apply with respect to the report to the  
15 Congress required by subparagraph  
16 (2)(B).

17 “(h) AUTHORIZATION FOR BUREAU OF INDUSTRY  
18 AND SECURITY.—The Secretary may authorize, without  
19 fiscal year limitation, the expenditure of funds transferred  
20 to, paid to, received by, or made available to the Bureau  
21 of Industry and Security of the Department of Commerce  
22 as a reimbursement in accordance with section 9703 of  
23 title 31, United States Code (as added by Public Law  
24 102–393).”.

1 **SEC. 204. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 18 of the Export Administration Act of 1979  
3 (50 U.S.C. App. 2417) is amended to read as follows:

4 “AUTHORIZATION OF APPROPRIATIONS

5 “SEC. 18. There are authorized to be appropriated  
6 to the Department of Commerce to carry out section 12  
7 of this Act such sums as may be necessary for each fiscal  
8 year.”.

9 **SEC. 205. TERMINATION DATE.**

10 Section 20 of the Export Administration Act of 1979  
11 (50 U.S.C. App. 2419) is amended by inserting before the  
12 period at the end the following: “, except that section 12  
13 shall not terminate”.

14 **SEC. 206. DESIGNATION OF DESTINATIONS OF DIVERSION**  
15 **CONCERN.**

16 (a) **EFFORTS WITH UAE.**—The Congress recognizes  
17 efforts taken by the United Arab Emirates, in coordina-  
18 tion with the Secretary of Commerce, in response to inter-  
19 national concerns over the diversion of dual-use items to  
20 prohibited destinations, parties, or uses, and urges the  
21 Secretary of Commerce to continue to work with the Gov-  
22 ernment of the United Arab Emirates to ensure that such  
23 efforts are successful in stopping such diversion of dual-  
24 use items.

25 (b) **COUNTRY OF DIVERSION CONCERN.**—Not later  
26 than 60 days after the date of the enactment of this Act,

1 the Secretary of Commerce shall amend the Export Ad-  
2 ministration Regulations by—

3 (1) creating a designation of a country as a  
4 “country of diversion concern” based on criteria that  
5 include, but are not limited to—

6 (A) volume of dual-use items transshipped  
7 through the country;

8 (B) volume and proportion of trade by the  
9 country with countries of concern for prolifera-  
10 tion or terrorism;

11 (C) inadequate export or reexport controls  
12 in the country;

13 (D) demonstrated inability to control diver-  
14 sion activities in the country; and

15 (E) unwillingness or inability of the gov-  
16 ernment of the country to cooperate with the  
17 United States in efforts to stop illegal transfers  
18 of dual-use items; and

19 (2) requiring the imposition of additional re-  
20 strictions on exports of dual-use items to a country  
21 of diversion concern, including, but not limited to,  
22 some or all of the following:

23 (A) Implementing more stringent review  
24 policies.

1 (B) Imposing additional license restric-  
2 tions.

3 (C) Requiring more frequent and more  
4 thorough end-user and end-use checks.

5 (c) REPORT.—Not later than 90 days after the date  
6 of the enactment of this Act, the Secretary of Commerce  
7 shall submit to the appropriate congressional committees  
8 a report describing in detail past, current, and future ef-  
9 forts undertaken or planned by the Governments of the  
10 United Arab Emirates, Malaysia, and the United States  
11 to ensure that dual-use items are not diverted to countries,  
12 entities, or uses of concern for proliferation or terrorism  
13 from the territory or jurisdiction of Malaysia or the United  
14 Arab Emirates.

15 (d) RESTRICTIONS.—Unless the Secretary of Com-  
16 merce makes the certification described in subsection (e)  
17 with respect to a country listed in that subsection, the Sec-  
18 retary shall by regulation impose the following measures  
19 with respect to that country:

20 (1) The Secretary shall designate the country  
21 as a country of diversion concern under subsection  
22 (b).

23 (2) The Secretary shall impose additional re-  
24 strictions on exports of dual-use items to the coun-  
25 try, including restrictions on nuclear dual-use items.

1       (e) CERTIFICATION.—The certification under this  
2 subsection is a certification by the Secretary of Commerce  
3 to the appropriate congressional committees, not later  
4 than 180 days after the date of the enactment of this Act,  
5 and not later than the end of each of the next 5 1-year  
6 periods, with respect to each of the countries of the United  
7 Arab Emirates and Malaysia that the Government of such  
8 country—

9           (1) has adopted and is vigorously implementing  
10       effective national laws and regulations controlling  
11       the export and transshipment of dual-use items; and

12           (2) is taking all reasonable steps to ensure that  
13       dual-use items within its territory and jurisdiction  
14       are not diverted to countries, entities, or uses of con-  
15       cern for proliferation or terrorism.

16       (f) SUBSEQUENT CERTIFICATIONS.—If the Secretary  
17 is unable to make a certification with respect to a country  
18 under subsection (e), the Secretary may at any time there-  
19 after make such a certification with respect to that coun-  
20 try.

21       (g) AUTHORIZATION OF APPROPRIATIONS.—

22           (1) IN GENERAL.—There are authorized to ap-  
23 propriated for each fiscal year such sums as may be  
24 necessary to carry out this section.

1           (2) FUNDS FOR ADDITIONAL PERSONNEL.—

2           There are authorized to be appropriated for each fis-  
3           cal year \$10,000,000 for additional personnel in the  
4           Department of Commerce to conduct end-use checks  
5           and export control compliance in the United Arab  
6           Emirates and Malaysia.

7   **SEC. 207. VALIDATED END-USER PROGRAM REVIEW.**

8           (a) AUDIT.—The Comptroller General shall conduct,  
9           and report to the appropriate congressional committees  
10          the results of, an audit of the Validated End-User pro-  
11          gram operated by the Department of Commerce. In doing  
12          so, the Comptroller General shall examine whether the na-  
13          tional security of the United States is sufficiently pro-  
14          tected by Validated End-User program procedures as they  
15          are designed and carried out, including those related to  
16          selecting, reviewing, and approving candidates for Vali-  
17          dated End-User status, monitoring compliance by Vali-  
18          dated End-Users with export control laws and regulations  
19          of the United States, and monitoring individual exports  
20          under the Validated End-User program.

21          (b) RESTRICTION ON DESIGNATION OF ADDITIONAL  
22          VALIDATED END-USERS.—The Secretary of Commerce  
23          may not designate additional Validated End-Users until  
24          the end of the 6-month period beginning on the date on  
25          which the report on the audit required under subsection

1 (a) is submitted to the appropriate congressional commit-  
2 tees.

3 (c) CONSULTATION PRIOR TO DESIGNATION.—The  
4 Secretary of Commerce shall consult with the appropriate  
5 congressional committees at least 30 days before desig-  
6 nating any Validated End-User.

7 **SEC. 208. ANNUAL REPORT ON TRANSFERS OF MILITARILY**  
8 **SENSITIVE TECHNOLOGY TO COUNTRIES AND**  
9 **ENTITIES OF CONCERN.**

10 (a) ANNUAL REPORT.—Not later than March 30 of  
11 each year beginning in 2009, the President shall transmit  
12 to the Congress a report on transfers to countries and en-  
13 tities of concern during the preceding calendar year of the  
14 most significant categories of United States technologies  
15 and technical information with potential military applica-  
16 tions.

17 (b) CONTENTS OF REPORT.—The report required by  
18 subsection (a) shall include, at a minimum, the following:

19 (1) An assessment by the Director of National  
20 Intelligence of efforts by countries and entities of  
21 concern to acquire technologies and technical infor-  
22 mation referred to in subsection (a) during the pre-  
23 ceding calendar year.

24 (2) An assessment by the Secretary of Defense,  
25 in consultation with the Joint Chiefs of Staff and



1 the Director of National Intelligence, of the cumu-  
2 lative impact of licenses granted by the United  
3 States for exports of technologies and technical in-  
4 formation referred to in subsection (a) to countries  
5 and entities of concern during the preceding 5-cal-  
6 endar year period on—

7 (A) the military capabilities of such coun-  
8 tries and entities; and

9 (B) countermeasures that may be nec-  
10 essary to overcome the use of such technologies  
11 and technical information.

12 (3) An audit by the Inspectors General of the  
13 Departments of Defense, State, Commerce, Home-  
14 land Security, Energy, and the Treasury, in con-  
15 sultation with the Director of National Intelligence  
16 and the Director of the Federal Bureau of Investiga-  
17 tion, of the policies and procedures of the United  
18 States Government with respect to the export of  
19 technologies and technical information referred to in  
20 subsection (a) to countries and entities of concern.

21 (c) ADDITIONAL REQUIREMENT FOR FIRST RE-  
22 PORT.—The first annual report required by subsection (a)  
23 shall include an assessment by the Inspectors General of  
24 the Departments of Defense, State, Commerce, Homeland  
25 Security, Energy, and the Treasury and the Inspector

1 General of the Central Intelligence Agency of the adequacy  
2 of current export controls and counterintelligence meas-  
3 ures to protect against the acquisition by countries and  
4 entities of concern of United States technology and tech-  
5 nical information referred to in subsection (a).

6 (d) SUPPORT OF OTHER AGENCIES.—Upon the re-  
7 quest of any of the officials responsible for preparing an  
8 assessment or audit required by subsection (b) or (c), the  
9 heads of other departments and agencies shall make avail-  
10 able to those officials all information necessary to carry  
11 to prepare such assessment or audit.

12 (e) CLASSIFIED AND UNCLASSIFIED REPORTS.—  
13 Each report required by this section shall be submitted  
14 in classified form and unclassified form.

15 (f) DEFINITION.—As used in this section, the term  
16 “countries and entities of concern” means—

17 (1) any country the government of which the  
18 Secretary of State has determined, for purposes of  
19 section 6(j) of the Export Administration Act of  
20 1979 or other applicable law, to have repeatedly pro-  
21 vided support for acts of international terrorism;

22 (2) any country that—

23 (A) has detonated a nuclear explosive de-  
24 vice (as defined in section 830(4) of the Nu-

1 clear Proliferation Prevention Act of 1994 (22  
2 U.S.C. 6305(4)); and

3 (B) is not a member of the North Atlantic  
4 Treaty Organization; and

5 (3) any entity that—

6 (A) is engaged in international terrorism  
7 or activities in preparation thereof; or

8 (B) is directed or controlled by the govern-  
9 ment of a country described in paragraph (1) or  
10 (2).

11 **SEC. 209. DEFINITION.**

12 In this title, the term “appropriate congressional  
13 committees” means the Committee on Foreign Affairs of  
14 the House of Representatives and the Committee on For-  
15 eign Relations of the Senate.

○